

## **REMARKS/ARGUMENTS**

Applicant has received and carefully reviewed the Office Action of September 15, 2009. Claims 13-22, 24, 31 and 33-36 are pending and have been rejected. Applicant respectfully traverses all adverse assertions and rejections presented in the Office Action. With this amendment, claims 35-36 have been canceled and their limitations incorporated into independent claims 13 and 24 in the interest of furthering prosecution. Favorable consideration of the above amendments and the following remarks is respectfully requested.

### ***Claim Rejections - 35 U.S.C. § 102/103***

Claims 13-17, 19-21, 24, 31 and 33-36 have been rejected under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Kleshinski (U.S. Patent No. 5,776,162). With this amendment, claims 35-36 have been canceled, rendering their rejection moot. Applicant respectfully traverses the rejection of claims 13-17, 19-21, 24, 31, and 33-34, particularly in view of the current amendments.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) ... “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). (MPEP 2131). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). (MPEP 2143.03).

Kleshinski does not appear to teach a plurality of filter legs actuatable between three distinct configurations, as required by the pending claims. Kleshinski appears to expressly disclose that “in the low temperature martensite phase...the set of wires can be straightened and held in a straight form” and in the “high temperature austenitic form, the filter 10 recovers a preformed filtering shape” (column 3, lines 17-22). Therefore, Kleshinski does not appear to disclose three distinct configurations as suggested in the Office Action. The Examiner appears to propose that the expanded filtering configuration shown in Figure 1 encompasses both of the claimed centering and filtering configurations. Applicant respectfully disagrees, as Kleshinski appears to expressly disclose the arrangement of Figure 1 as a single configuration – that of the

preformed filtering shape. The device of Kleshinski does not appear to take on three distinct configurations, as claimed in the present application.

Applicant notes that in rejecting the claims, the Examiner has failed to address the limitation of claims 35-36. This is taken as an express admission that the limitation of the claims is not taught or suggested by Kleshinski. Thus, without conceding the correctness of the present rejection(s), Applicant has added this limitation to claims 13 and 24 in the interest of advancing prosecution. The limitation requires that the proximal section of each leg avoid contact with the vessel wall when the legs are in the filtering configuration. Kleshinski appears to expressly teach that “loops 20 press outwardly against the inner wall of the vein...loops 20 thereby help to keep filter 10 in place” (column 3, lines 40-43). Thus, proximal section 16 does not appear configured to avoid contact with the vessel wall, but is expressly taught to provide contact with the vessel wall and furthermore, appears to be required to do so in order for the filter to function as intended. Therefore, not only does Kleshinski not anticipate claims 13 and 24, Kleshinski expressly teaches away from the claimed configuration.

Applicant also notes that the first filter basket 16 of Kleshinski is “made up a series of seven overlapping loops 20 arranged to form a rosette” [sic] (column 3, lines 32-33). Seven loops cannot be equidistantly spaced at 60-degree intervals as asserted in the Office Action (page 2, last paragraph). Additionally, the bend region of loops 20 forming a pad appear to curve circumferentially (as most easily seen in Figure 1 where loop 20 crosses over the wires as they enter the proximal end of coil 14) and do not appear to extend radially outward at equidistant intervals, as claimed.

For at least the reasons discussed above, Applicant submits that independent claims 13 and 24 are both novel and non-obvious over Kleshinski. Applicant also submits that claims 14-17, 19-21, 31, and 33-34 are in condition for allowance because each depends from claim 13 or 24, which Applicant submits are allowable, and each contains additional elements. Applicant respectfully requests that the rejection be withdrawn.

### ***Claim Rejections - 35 U.S.C. § 103***

Claim 18 was rejected under 35 U.S.C. §103(a) as being unpatentable over Kleshinski in view of Boylan et al. (U.S. Patent No. 6,602,272). Applicant respectfully traverses the rejection. Applicant notes that the detailed discussion of this rejection to Kleshinski and Boylan et al. still

refers to Lefebvre (5,108,418) in view of Simon (4,425,908) – neither of which is currently cited in the rejection of base claim 13. Regardless, for at least the reasons discussed above, independent claim 13 is believed to be patentable over Kleshinski. Boylan et al. do not appear to remedy the shortcomings of Kleshinski with respect to claim 13. Therefore, claim 13 is believed to be patentable over the cited combination. Since claim 18 depends therefrom and adds additional elements thereto, Applicant submits that claim 18 is also patentable over the cited combination. Withdrawal of the rejection is respectfully requested.

Claim 22 was rejected under 35 U.S.C. §103(a) as being unpatentable over Lefebvre (U.S. Patent No. 5,108,418) as applied to claim 13 above in view of Mazzocchi et al. (U.S. Patent No. 6,949,103). Applicant respectfully traverses the rejection. Similar to the discussion of claim 18 above, the rejection of claim 22 also refers to Lefebvre and Simon. However neither of these references is cited in the rejection of base claim 13. Applicant believes this was a typographical error, and that the rejection was intended to cite Kleshinski instead of Lefebvre.

Regardless, neither Kleshinski nor Lefebvre appear to properly anticipate or render obvious independent claim 13, for at least the reasons discussed above. Mazzocchi et al. do not appear to remedy the shortcomings of Kleshinski or Lefebvre. Therefore, claim 13 is believed to be patentable over the cited combination. Since claim 22 depends therefrom and adds additional elements thereto, Applicant submits that claim 22 is also patentable over the cited references. Withdrawal of the rejection is respectfully requested.

***Conclusion***


It is respectfully submitted that all pending claims are currently in condition for allowance. Further examination, reconsideration, and withdrawal of the rejections are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at 612.677.9050.

Respectfully submitted,

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By his Attorney,

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